

**COURT NO. 1, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**OA No. 720/2019**

**Ex Hav Shri Bhagwan**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant** : Mr. Virender Singh Kadian, Advocate

**For Respondents** : Mr. Arvind Kumar, Advocate

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**O R D E R**

**O.A. 720/2019**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this O.A and the reliefs claimed in Para 8 - read as under:

“

- a) Quash and set aside impugned letter No. 15117753K/Appeal/Pen-2(D) dated 03.04.2019.***
- b) Direct respondents to treat the disability of the applicant Cerebellar Medulla Blastoma***

- c) Blastoma (Optd) assessed @40% as attributable to or aggravated by Army service.**
- d) Direct the respondent to grant disability element of pension to the applicant with benefits of rounding off/ broad banding of the disability element.**
- e) Direct the respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of retirement with all consequential benefits.**
- f) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents. ”**

### **BRIEF FACTS**

2. The applicant was enrolled in the Indian Army on 24.02.1992 and was invalided out from service on 05.11.2010 in low medical category S1H1AP3E1 (permanent) under Army Rule 13 (3) item III (iii). The applicant suffered from the disability namely “Cerebellar Medulla Blastoma”, which was assessed, by the categorisation board dated 15.11.2008 , @40 % for life and considered at neither attributable to or aggravated by service. However, the Invaliding Medical Board dated

17.09.2010 assessed the disability of the applicant @1-5 % and considered it as neither attributable to or aggravated by service.

3. The claim for the grant of the disability pension was considered and the competent authority upheld the decision of the medical board and denied the disability pension on 24.06.2011 in terms of HQ MoD (Army) letter No. B/40122/MA(P)/AG/PS-5 dated MoD letter No. 1(2)/2002/D (Pen-C) dated 01.09.2005 as amended vide letter No. 31.05.2006.

4. The applicant approached the Artillery Records through his application on 07.09.2017 for the grant of disability pension, which was replied to, vide Artillery Records letter No. 15117753K/initial/PEN-2 dated 15.09.2017 explaining the position regarding non entitlement of disability pension in terms of Para 173 of the Pension Regulation for the Army, 1961, Part-

5. Subsequently, the applicant again approached the Artillery Records through an application on 11.03.2019 for the grant of disability pension, which was replied to by the competent authority vide Artillery Records letter No. 15117753K/Appeal/Pen-3(D) dated 03.04.2019 and rejected the claim of the applicant for the grant of disability pension,

aggrieved of which, the applicant has filed the instant O.A. and thus, in the interest of justice, we take up the same for consideration.

### **CONTENTIONS OF THE PARTIES**

6. The learned counsel for the applicant submitted that the respondents that the applicant suffered from the disability namely "Cerebellar Medulla Blastoma" while performance of military duty, which was assessed, by the categorisation board dated 15.11.2008 , @40 % for life and considered at neither attributable to or aggravated by service.

7. The learned counsel of the applicant placed reliance on ***Dharamvir singh Vs. Union of India, Civil Appeal No. 4949 of 2013, (2013) 7 SCC 316***, whilst making submission as to that whether the disability is attributable to or aggravated by military service is to be determined by the Entitlement Rules for Casualty Pensionary Awards, 1982 as shown in Appendix-II , the Government of India letter No. 1(1)/81/d(Pen-C) dated 20.06.1996 and GMO, 2002.

8. The learned counsel for the applicant placed reliance on the verdict of the Hon'ble Supreme Court in ***Rajbir Singh Vs. Union of India & Ors. (2015 (2) SCALE 371)***. Reliance is also

placed on the verdict of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India & Ors. (Civil Appeal No. 4949 of 2013)*** wherein it was observed in para 28, which reads as under :-

***"28. A conjoint reading of various provisions, reproduced above, makes it clear that:***

***(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in nonbattle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of AppendixII (Regulation 173).***

***(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].***

***(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).***

***(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the***

**onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].**

**(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].**

**(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and**

**(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the "Guide to Medical (Military Pension), 2002 - "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above."**

to contend to the effect, that if there is no note or record at the time of entrance, in the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service.

9. Per Contra, the learned counsel for the respondents submitted that the applicant suffered with the said disability which was assessed by the Categorisation board @40% for life and considered it as neither attributable to nor aggravated by

service. However, subsequent to the categorisation board, the competent authority conducted IMB dated 17.09.2010 which assessed the said disability of the applicant @1-5% for life and considered the same as neither attributable to nor aggravated by service.

10. The learned counsel for the respondents submitted that there was no causal connection between the disability of the applicant and the military duty.

11. The learned counsel for the respondents further relied upon Rule 173 of the Pension Regulation for Army, 1961 (Part-I) which stipulates that, the primary condition for the grant of disability pension is granted when the personnel is invalided out from service on account of the disability being attributable to or aggravated by military service and is assessed at 20% or more. The learned counsel submitted that since the disability does not fulfil both the conditions stipulated in the rules, hence the disability 'Cerebellar Medulla blastoma' was rightly assessed as NANA.



## ANALYSIS

12. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of disability assessed by the categorization board dated 15.11.2008, @40% for life and considered it to be neither attributable to nor aggravated by service. However, subsequent to the categorization board, the IMB dated 17.09.2010 was conducted which assessed the disability of the applicant 1-5% for life.

13. The minimum qualifying criteria for the grant of disability pension is 20% in terms of Para 173 of the Pension Regulation for the Army, 1961. In the instant case, it is not in dispute that the IMB has assessed the disability at 1-5% for life and considered it to be neither attributable to not aggravated by military service. It is pertinent to mention that the after the categorization board the applicant underwent 'suboccipital craniectomy & excision' procedure after which the condition of the applicant improved and he was cured of the said disability as it is evident in the medical case sheet annexed with the



report of IMB. Therefore, in our view, the applicant does not fulfill the minimum qualifying criteria for the grant of disability pension and thus, after analyzing the improved condition of the applicant, the IMB had rightly assessed the said disability @ 1-5% for life (i.e. less than 20%).

14. In so far as the attributability or aggravation is concerned which was considered to be NANA by the medical board, it is pertinent to mention that in the instant case the applicant suffered from the said disability of 'Cerebellar Medulla Blastoma' on 20.05.2006 at Jhajjar. The applicant was treated for the said disability at Base Hospital, Delhi Cantt., wherein the applicant underwent suboccipital craniectomy and excision procedure on 25.05.2006 after which the applicant's medical condition got stable and had left only with scars due to which the IMB assessed the disability @1-5% for life (less than 20%) and considered it to be neither attributable to nor aggravated by service. It is pertinent to mention that the Guide to Medical Officer (Military Pension), 2008 does not entails any categorisation in relation to the said disability for conceding attributability or aggravation for the grant of disability pension.

The applicant has, thus, failed to bring on record that the

disability caused to the applicant was due to performance of military duty. Hence, we do not find any error in the medical board proceedings which considered the said disability as neither attributable to nor aggravated by service.

### **CONCLUSION**

15. We, thus, hold that the disability 'Cerebellar Medulla Blastoma' has no causal connection with military duty and therefore, there is no merit in the case, the OA 720/2019 is thus dismissed.

Pronounced in the open Court on this day of <sup>ed</sup> 22 April, 2024.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

/pranav/